

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 28 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHAMPAKLAL J GADHIYA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

Mr M A Bukhari, APP for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/02/97

ORAL JUDGEMENT

Rule. Mr M A Bukhari, learned APP waives service of rule on behalf of respondent No.1.

I have heard the learned Advocate for the applicant and the learned APP. It cannot be disputed that the trial court has power to direct further investigation under the provisions of section 173 (8) of

the Code of Criminal Procedure. If it needs, reference may be made to the decisions of the Apex Court in the cases of Shri Mahant Amar Nath vs. State of Haryana, reported in AIR 1983 SC 288, Ram Lal Narang v.State (Delhi Admn.), reported in AIR 1979 SC 1791, However, the question arises in the present case is whether there are any justified grounds for directing re-investigation at the trial stage. The accused Manish Champaklal Gadhiya is facing trial in the Sessions case No.142/92 in the court of Addl.Sessions Judge, Bhavnagar at Mahuva on the charge of murder of one Rashid. During the trial, the learned Addl.Public Prosecutor submitted application dated 6.4.1996 stating that taking into consideration, the statements before the police of the complainant-Ghanchi Habibhiai Sulamanbhai and witness Fakir Shaukatshah Alamshah and witness Iqubal Bachubhai and the affidavits, it transpires that in this case, besides the present accused, his father Champaklal Jamnadas Gadhiya has also played the role in the offence. It is further stated that he has inflicted knife in the stomach of the deceased and because of that injury, the intestine of the deceased has come iout. On this fact, the prayer was made to add Champaklal Jamnadas Gadhiya as accused in exercise of powers under section 319 of the Code of Criminal Procedure.

2. The learned Judge, after referring to certain statements and affidavit, arrived at the conclusion that the entire investigation cannot said to have been made honestly. It is further observed that no evidence is collected which may establish offence against the witness, but on the contrary the evidence collected may give benefit to both the accused persons. Thus in the opinion of the Trial Judge, the re-investigation of the accused was necessary. Examining the legal position, the learned Judge also observed that if the trial court did find defect in the investigation, the same can be sent for re-investigation for improving the same.

3. Having read the impugned order passed by the learned Judge, in my view, there is no need of re-investigation. The incident is of 1992. The statement of eye witnesses are on record and so as medical evidence as well. The prosecution can examine the witness whose statements have been recorded under section 161 of the C.P.C. Any fresh statement after 5 years or even improvement in the statement will only create confusion in the trial. Thus, in a case where a direct evidence is available, ordinarily re-investigation after a number of years is not desirable. The same object can be achieved by calling the person under the

provisions of section 319 of the C.P.C. In fact, this was the application in the present case by the prosecution.

4. In view of the aforesaid, this Revision Application is allowed and the order of the learned Addl.Sessions Judge, Bhavnagar, Camp: Mahuva dated 6.12.1996 is quashed and set aside. It is directed that the learned Sessions Judge will consider and pass fresh appropriate order on the application dated 6.4.1996 filed by the Addl.Public Prosecutor, Camp: Mahuva for adding Champaklal Jamnadas Gadhiya as accused for offence under section 319 of the C.P.C. Rule made absolute to the aforesaid extent.